

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 319**

Introduced by Moser, 22.

Read first time January 16, 2019

Committee: Natural Resources

- 1 A BILL FOR AN ACT relating to the Department of Natural Resources; to
- 2 amend sections 31-1017 and 61-206, Reissue Revised Statutes of
- 3 Nebraska, and section 46-753, Revised Statutes Cumulative
- 4 Supplement, 2018; to change provisions relating to notice and rules
- 5 and regulations; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 31-1017, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 31-1017 The department shall be the official state agency for all  
4 matters pertaining to flood plain management. In carrying out that  
5 function, the department shall have the power and authority to:

6 (1) Coordinate flood plain management activities of local, state,  
7 and federal agencies;

8 (2) Receive federal funds intended to accomplish flood plain  
9 management objectives;

10 (3) Prepare and distribute information and conduct educational  
11 activities which will aid the public and local units of government in  
12 complying with the purposes of sections 31-1001 to 31-1023;

13 (4) Provide local governments having jurisdiction over flood-prone  
14 lands with technical data and maps adequate to develop or support  
15 reasonable flood plain management regulation;

16 (5) Adopt and promulgate rules and regulations establishing minimum  
17 standards for local flood plain management regulation. In addition to the  
18 public notice requirement in the Administrative Procedure Act, the  
19 department shall, at least twenty days in advance, notify ~~by mail~~ the  
20 clerks of all cities, villages, and counties which might be affected of  
21 any hearing to consider the adoption, amendment, or repeal of such  
22 minimum standards. Such minimum standards shall be designed to protect  
23 human life, health, and property and to preserve the capacity of the  
24 flood plain to discharge the waters of the base flood and shall take into  
25 consideration (a) the danger to life and property by water which may be  
26 backed up or diverted by proposed obstructions and land uses, (b) the  
27 danger that proposed obstructions or land uses will be swept downstream  
28 to the injury of others, (c) the availability of alternate locations for  
29 proposed obstructions and land uses, (d) the opportunities for  
30 construction or alteration of proposed obstructions in such a manner as  
31 to lessen the danger, (e) the permanence of proposed obstructions or land

1 uses, (f) the anticipated development in the foreseeable future of areas  
2 which may be affected by proposed obstructions or land uses, (g) hardship  
3 factors which may result from approval or denial of proposed obstructions  
4 or land uses, and (h) such other factors as are in harmony with the  
5 purposes of sections 31-1001 to 31-1023. Such minimum standards may, when  
6 required by law, distinguish between farm and nonfarm activities and  
7 shall provide for anticipated developments and gradations in flood  
8 hazards. If deemed necessary by the department to adequately accomplish  
9 the purposes of such sections, such standards may be more restrictive  
10 than those contained in the national flood insurance program standards,  
11 except that the department shall not adopt standards which conflict with  
12 those of the national flood insurance program in such a way that  
13 compliance with both sets of standards is not possible;

14 (6) Provide local governments and other state and local agencies  
15 with technical assistance, engineering assistance, model ordinances,  
16 assistance in evaluating permit applications and possible violations of  
17 flood plain management regulations, assistance in personnel training, and  
18 assistance in monitoring administration and enforcement activities;

19 (7) Serve as a repository for all known flood data within the state;

20 (8) Assist federal, state, or local agencies in the planning and  
21 implementation of flood plain management activities, such as flood  
22 warning systems, land acquisition programs, and relocation programs;

23 (9) Enter upon any lands and waters in the state for the purpose of  
24 making any investigation or survey or as otherwise necessary to carry out  
25 the purposes of such sections. Such right of entry shall extend to all  
26 employees, surveyors, or other agents of the department in the official  
27 performance of their duties, and such persons shall not be liable to  
28 prosecution for trespass when performing their official duties;

29 (10) Enter into contracts or other arrangements with any state or  
30 federal agency or person as defined in section 49-801 as necessary to  
31 carry out the purposes of sections 31-1001 to 31-1023; and

1 (11) Adopt and enforce such rules and regulations as are necessary  
2 to carry out the duties and responsibilities of such sections.

3 Sec. 2. Section 46-753, Revised Statutes Cumulative Supplement,  
4 2018, is amended to read:

5 46-753 (1) The Water Resources Trust Fund is created. The State  
6 Treasurer shall credit to the fund such money as is specifically  
7 appropriated thereto by the Legislature, transfers authorized by the  
8 Legislature, and such funds, fees, donations, gifts, or bequests received  
9 by the Department of Natural Resources from any federal, state, public,  
10 or private source for expenditure for the purposes described in the  
11 Nebraska Ground Water Management and Protection Act. Money in the fund  
12 shall not be subject to any fiscal-year limitation or lapse provision of  
13 unexpended balance at the end of any fiscal year or biennium. Any money  
14 in the fund available for investment shall be invested by the state  
15 investment officer pursuant to the Nebraska Capital Expansion Act and the  
16 Nebraska State Funds Investment Act.

17 (2) The fund shall be administered by the department. The department  
18 ~~may shall~~ adopt and promulgate rules and regulations regarding the  
19 allocation and expenditure of money from the fund.

20 (3) Money in the fund may be expended by the department for costs  
21 incurred by the department, by natural resources districts, or by other  
22 political subdivisions in (a) determining whether river basins,  
23 subbasins, or reaches are fully appropriated in accordance with section  
24 46-713, (b) developing or implementing integrated management plans for  
25 such fully appropriated river basins, subbasins, or reaches or for river  
26 basins, subbasins, or reaches designated as overappropriated in  
27 accordance with section 46-713, (c) developing or implementing integrated  
28 management plans in river basins, subbasins, or reaches which have not  
29 yet become either fully appropriated or overappropriated, or (d)  
30 attaining state compliance with an interstate water compact or decree or  
31 other formal state contract or agreement.

1           (4) Except for funds paid to a political subdivision for forgoing or  
2 reducing its own water use or for implementing projects or programs  
3 intended to aid the state in complying with an interstate water compact  
4 or decree or other formal state contract or agreement, a political  
5 subdivision that receives funds from the fund shall provide, or cause to  
6 be provided, matching funds in an amount at least equal to twenty percent  
7 of the amount received from the fund by that natural resources district  
8 or political subdivision. The department shall monitor programs and  
9 activities funded by the fund to ensure that the required match is being  
10 provided.

11           Sec. 3. Section 61-206, Reissue Revised Statutes of Nebraska, is  
12 amended to read:

13           61-206 (1) The Department of Natural Resources is given jurisdiction  
14 over all matters pertaining to water rights for irrigation, power, or  
15 other useful purposes except as such jurisdiction is specifically limited  
16 by statute. ~~The Such~~ department ~~may shall~~ adopt and promulgate rules and  
17 regulations governing matters coming before it. It may refuse to allow  
18 any water to be used by claimants until their rights have been determined  
19 and made of record. It may request information relative to irrigation and  
20 water power works from any county, irrigation, or power officers and from  
21 any other persons. It may have hearings on complaints, petitions, or  
22 applications in connection with any of such matters. Such hearings shall  
23 be had at the time and place designated by the department. The department  
24 shall have power to certify official acts, compel attendance of  
25 witnesses, take testimony by deposition as in suits at law, and examine  
26 books, papers, documents, and records of any county, party, or parties  
27 interested in any of the matters mentioned in this section or have such  
28 examinations made by its qualified representative and shall make and  
29 preserve a true and complete transcript of its proceedings and hearings.  
30 If a final decision is made without a hearing, a hearing shall be held at  
31 the request of any party to the proceeding if the request is made within

1 thirty days after the decision is rendered. If a hearing is held at the  
2 request of one or more parties, the department may require each such  
3 requesting party and each person who requests to be made a party to such  
4 hearing to pay the proportional share of the cost of such transcript.  
5 Upon any hearing, the department shall receive any evidence relevant to  
6 the matter under investigation and the burden of proof shall be upon the  
7 person making the complaint, petition, and application. After such  
8 hearing and investigation, the department shall render a decision in the  
9 premises in writing and shall issue such order or orders duly certified  
10 as it may deem necessary.

11 (2) The department shall serve as the official agency of the state  
12 in connection with water resources development, soil and water  
13 conservation, flood prevention, watershed protection, and flood control.

14 (3) The department shall:

15 (a) Offer assistance as appropriate to the supervisors or directors  
16 of any subdivision of government with responsibilities in the area of  
17 natural resources conservation, development, and use in the carrying out  
18 of any of their powers and programs;

19 (b) Keep the supervisors or directors of each such subdivision  
20 informed of the activities and experience of all other such subdivisions  
21 and facilitate cooperation and an interchange of advice and experience  
22 between such subdivisions;

23 (c) Coordinate the programs of such subdivisions so far as this may  
24 be done by advice and consultation;

25 (d) Secure the cooperation and assistance of the United States, any  
26 of its agencies, and agencies of this state in the work of such  
27 subdivisions;

28 (e) Disseminate information throughout the state concerning the  
29 activities and programs of such subdivisions;

30 (f) Plan, develop, and promote the implementation of a comprehensive  
31 program of resource development, conservation, and utilization for the

1 soil and water resources of this state in cooperation with other local,  
2 state, and federal agencies and organizations;

3 (g) When necessary for the proper administration of the functions of  
4 the department, rent or lease space outside the State Capitol; and

5 (h) Assist such local governmental organizations as villages,  
6 cities, counties, and natural resources districts in securing, planning,  
7 and developing information on flood plains to be used in developing  
8 regulations and ordinances on proper use of these flood plains.

9 Sec. 4. Original sections 31-1017 and 61-206, Reissue Revised  
10 Statutes of Nebraska, and section 46-753, Revised Statutes Cumulative  
11 Supplement, 2018, are repealed.